IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2482 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE PROJECT MANAGER - Appellant(s)
Versus
ANARBEN MAGANJI & 2 - Defendant(s)

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Appearance :
MR RR MARSHALL for Appellant(s) : 1,
None for Defendant(s) : 1,
MR AV PRAJAPATI for Defendant(s) : 1.2.1,1.2.2
GOVERNMENT PLEADER for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 28/06/2007

ORAL JUDGMENT

1. Rule. Learned AGP waives service of rule.

2. Project Manager ONGC Project appellant original defendant has filed this first appeal against the

judgment and award dated 31.1.94 passed by the Extra Assistant Judge, Mehsana in LAR case No. 846/87. By the impugned judgment the learned judge was pleased to allow Land Reference Application of the claimant. The Learned judge further directed that the applicant is entitled to Rs 30,000/- from the opponent including 9% interest from the date of taking possession of the land. The learned judge further held that the opponent was awarded Rs 150 as yearly rent and as per Are is Rs 11,134/-. The appellant is entitled to get 9% interest of the same. The learned judge further held that the applicant is also entitled to the said amount from ONGC till ONGC fixed the amount from time to time.

3. Heard Mr. Marshall learned advocate for the appellant in this behalf. The matter was placed for hearing before this court on 24.11.03. Appeal was admitted and as far as interim relief is concerned in Civil Application the court has also granted interim relief in CA No. 8325/03. Now the matter is placed for final disposal. I have heard Mr. R.R Marshall learned advocate for the appellant. I have heard Mr. A. V Prajapati on behalf of the claimants 1 and 2 and Mr. Kalpesh Pandit learned AGP for Special Land Acquisition Officer.

4. Learned advocate Mr Marshall states that Shri Thakore Maganji expired during the pendency of the petition. The legal heirs and representatives of the said deceased are entitled to recover from

ONGC an additional amount of yearly rent at Rs 150/- per acre (i.e 1.50 per sq mts towards the rent fixed by ONGC from time to time with interest. Further the present respondent was entitled to get an additional amount of yearly rent @ per acre (i.e 1.50 as per sq.mts).

5. Being aggrieved by and dissatisfied with the aforesaid judgment particularly judgment of the learned judge so far the payment of yearly rent of Rs 150/- per acre over the rent fixed by ONGC from time to time and that too with running interest @ 9% p.a. As regards the compensation is concerned 1.50 per Sq mts ONGC has already paid and does not want dispute in that part of the matter. Mr. Marshall state that the learned trial judge ought to have appreciated that it could not have given a rent of Rs 1.50 paise per meter over the rent fixed by Collector from time to time and without knowing what would be the rent fixed by ONGC. ONGC on its own accord from 1.1.97 had paid the farmers @ Rs 2.50 per meter and from 1.1.2000 @ Rs 3.75 per Are. In this view of the matter if the impugned part of the award is not set aside, the respondent will be entitled to Rs 3.75 + 1.50 paise which would amount to Rs 5.25 per meter which would be much more than Rs 1.50 per which has been found adequate by the Court and not only that the amount would have to be paid with interest @ 9 % which would clearly be highly unfair to the appellant in this behalf and contrary to and in-consistent with the provisions

of law in this behalf.

6. The facts giving rise to this appeal are as under.

6.1 The land is situated in Jaguda in Mehsana. The project Manager ONGC had acquired the said land for temporary purpose and on 12.4.85 the ONGC took the possession in this behalf. The land acquisition officer by his judgment and order dated 16.5.85 pleased to award Rs 50 per Are which the claimant has accepted the same with objection.

6.2 Being aggrieved and dissatisfied with the said award the claimant filed Reference Application before the learned trial judge and the claimant have claimed Rs 150 per Are. The claimant have also claimed compensation of Rs 1,70684-25 regarding damage of the crop and further Rs 11, 134/- compensation from the ONGC and 9% interest from the date of possession in this behalf. The appellant has challenged the part of the judgments and awards passed by the learned Extra Assistant Judge, Mehsana whereby the Reference Court directed the appellant to pay additional amount towards yearly rent per Are over the rent fixed by the appellant-ONGC from time to time along with interest at the rate of 9% per annum to the opponents herein.

6.3 The present appellants have preferred that against the part impugned operative order wherein

the reference court directed the appellant ONGC " over the rent fixed by ONGC from time to time with the running interest at the rate of 9% p.a from the date of due date of running till the day of payment is made.

7. Mr. Marshall has relied upon section 35 of the land Acquisition Act which is as under

7.1 Section 35 of the land Acquisition which is in part 6 which provides Temporary occupation of waste or arable land, procedure when difference as to compensation exists. Sub section 3 of section 35 provides " In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court." Mr Marshall states that as per judgment of this Court of Shri Lalbhai Ballabhbhai Vs. ONGC Ankleshwar AIR 1988 Guj 268 wherein A temporary acquisition of land for Oil and Natural Gas Corporation which is a company within the meaning of the Act is valid even if made without enquiry under section 5A. In the First Appeal No. 792/03 in the matter of Project Manager Vs. Chaudhari Shamjibhai Devraj dated 21.3.06. He has submitted that the facts in that case are almost identical namely land was acquired by ONGC for temporary purpose in that case by brother Justice K.S.

Jhaveri. My Brother justice K.S. Jhaveri has disposed of the appeal in para 5.1, 5.2, 5.3.

7.2 " 5.1 Section 35 (3) of the Act fairly provides that in any case there is any difference as to sufficiency of the compensation, the collector shall refer such difference to the decision of the Court. In the present case, the Special Land Acquisition officer after following the due procedure had taken over the possession of the lands in question and had determined the amount of compensation and since the said amount of compensation was not satisfactory to the opponents they had preferred the said reference applications before the Court of the Learned Extra Assistant Judge, Mehsana. Thus looking to the provisions of section 35 (3) of the Act, I am of the opinion that the learned judge ought not to have enhanced amount of compensation fixed by the Special Land Acquisition Officer of the appellant-O.N.G.C under the notification which is subject matter of challenge. By enhancing the amount of compensation which is under challenge before this Court in these appeals, the learned Judge has traveled beyond the scope of the notification in question.

7.3 On the facts of the case, it is evident that the Reference Court has also determined the further rent which issue was not before it. I am, therefore, of the opinion that the contention raised by the learned Advocate for the appellant that the observation or direction issued by the Reference Court in the operative part of the orders require to be quashed and set aside, is required to be accepted. If the said direction is allowed to remain then it would amount to granting the rent which is over the rent fixed by the appellant-O.N.G.C. from time to time. Moreover, the same has been fixed without considering as to what would be the future rent fixed by the appellant- O.N.G.C, which is beyond the scope of reference. Hence if the said observation is allowed to remain then, in that

event such compensation would be much more than the amount which has been found to be adequate by the Court.

7.4 It may be noted that the Reference Court was dealing with a particular acquisition and it was not open for the said Court to pass an order in respect of future rent. Such an observation on the part of the Reference Court is clearly bad in law in view of the provisions of Section 35(3) of the Act. In that view of the matter, the observations or direction issued by the Reference Court with regard to additional amount of compensation, requires to be quashed and set aside.

8. I have considered section 35 of the Land Acquisition Act particularly sub section 35 (3) of the land Acquisition Act.

After going through the section 35 it appears that " An examination of section 35 will show that whenever any waste or arable land is needed for temporary occupation and use by the Government, it can authorise the Collector to procure the occupation and use of the same for not more than three years. The Government gives this permission to go ahead with the occupation to the Collector who is, on the strength of such permission required to give notice in writing to the interested persons intimating to them the purpose for which the land was needed. He is also required to pay such compensation either in a gross sum of money or by monthly or other periodical payments for occupying and using the land, for the term, for which the Government needs it, and for taking material, if any from such land. The terms which may be agreed between the Collector and the owner of the land. The terms which may be agreed between the Collector and the owner of the land in respect

of the amount and mode of payment of compensation and about the material which is to be taken out from the owner's land, in this regard are required to be reduced into writing in the form of an agreement.”

9. In view of the provisions of section 35 and section 35 (3) of the Act and in view of the judgment of this Court in the matter of Project Manager Vs Chaudhari Shamjibhai decided by this Court by (Coram : K.S. Jhaveri,J) on 21.3.06 which has been reproduced earlier. The present appeal is required to be allowed where the court has observed that the observations and directions issued by the Reference Court with regard to additional amount of compensation, requires to be quashed and set aside.

10. In the result, these appeals are allowed. The observation “ over the rent fixed by ONGC from time to time with the running interest at the rate of 9 % p.a from the date of due date of running till the day of payment is made” made by the reference Court in the operative part of the impugned judgments and awards, is quashed and set aside. These appeals are allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent with no order as to costs.

(K.M.Mehta,J)

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